



Commonwealth of Massachusetts State Ethics Commission

One Ashburton Place, Room 619, Boston, MA, 02108
phone: 617-727-0060, fax: 617-723-5851



SUFFOLK, ss

COMMISSION ADJUDICATORY
DOCKET NO. 712

IN THE MATTER
OF
KATHY BARRASSO

DISPOSITION AGREEMENT

The State Ethics Commission and Kathy Barrasso enter into this Disposition Agreement pursuant to Section 5 of the Commission's *Enforcement Procedures*. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, § 4(j).

On October 7, 2003, the Commission initiated, pursuant to G.L. c. 268B, § 4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Barrasso. On December 16, 2003, the Commission amended the preliminary inquiry to include additional allegations. The Commission has concluded its inquiry and, on August 3, 2004, found reasonable cause to believe that Barrasso violated G.L. c. 268A.

The Commission and Barrasso now agree to the following findings of fact and conclusions of law.

Findings of Fact

1. From December 1985 until October 15, 2002, Barrasso was the Dennis Housing Authority ("the DHA") executive director, appointed by the DHA Board of Directors to manage a staff of about seven people. When Barrasso resigned from the DHA in October 2002, Barrasso's annual salary was \$61,464.

Salary Advances

2. As the executive director, Barrasso was responsible for distributing the weekly paychecks to her staff every Wednesday.

3. As a matter of convenience, the DHA Board members would prepare and sign the paychecks up to six weeks in advance, then leave the completed checks in Barrasso's office for Barrasso to distribute at the appropriate time each week. Paychecks were to be distributed on Wednesdays for the work performed the previous Monday through Friday.

4. Throughout her tenure as executive director, Barrasso would frequently take her own paycheck, alter its date and deposit it into her bank account days or weeks before she had actually earned it. Between July 1, 2001 and October 15, 2002, Barrasso altered (or directed someone to alter for her) 28 of her own paychecks. At the time, Barrasso's weekly net income was about \$740. For example, all five of Barrasso's July 2002 checks were altered to the corresponding June dates; thus, a July 31, 2002 check was altered to reflect a nonexistent June 31, 2002 date. In some cases, two or more checks were altered to reflect the same date, or dates only a few days apart. In addition, Barrasso took and deposited 21 checks ahead of time without altering them.

5. When subordinates asked to receive their paychecks early, Barrasso would alter their checks and distribute them ahead of when they were due.

6. Barrasso and her subordinates eventually performed the work for which they received the advance payments.

7. At no time was the DHA Board aware of Barrasso's conduct regarding the paychecks, and at no time did the DHA Board approve these salary advances.

Sick and Vacation Time

8. On July 23, 2001, Greg Shorey, who had been friendly with Barrasso's husband, began working at the DHA. According to the DHA policy, Shorey was not eligible for any vacation days until his six-month probationary period ended on January 23, 2002. In addition, Shorey was not eligible for any sick days until September 2001, at which time he would begin to accrue only 1.25 sick days per month.

9. At his prior job working for another town's housing authority, Shorey had accrued and not used 6.25 days of vacation and 6.25 days of sick time.

10. Contrary to DHA policy and without the knowledge or approval of the DHA Board, Barrasso allowed Shorey to commence his DHA employment with 6.25 days of vacation and 6.25 days of sick time.

11. Shorey took one sick day in July 2001. Shorey was completely absent from work beginning in mid-October 2001 and throughout the entire month of November 2001. Shorey ended the month of December 2001—and his tenure at the DHA—by taking 11 consecutive vacation days.

12. Shorey continued to receive his regular paychecks during his extended absences without any deductions for or indications of leave taken.

13. By the time Shorey was terminated from the DHA in December 2001—prior to the end of his six-month probationary period—he had taken a total of 36.25 vacation days and 18 sick days. Thus, Shorey left the DHA having taken over 50 sick or vacation days to which he was not entitled, at a cost of over \$6,000 to the DHA.

14. Contrary to DHA policy and without the knowledge or approval of the DHA Board, Barrasso allowed Shorey to be paid for the sick and vacation days that he had not earned.

15. Contrary to DHA policy and without the knowledge or approval of the DHA Board, Barrasso also allowed five other DHA employees to take almost 60 days of unearned vacation or sick time between July 2001 and December 2002, at a total cost of \$6,450 to the DHA.

Conclusions of Law

16. As the DHA executive director, Barrasso was an appointed municipal employee within the meaning of G.L. c. 268A.

17. G.L. c. 268A, § 23(b)(2) prohibits a municipal employee from knowingly, or with reason to know, using her official position to secure for herself or others unwarranted privileges or exemptions which are of substantial value and not properly available to similarly situated individuals.

Salary Advances

18. As noted above, Barrasso gave herself and her employees salary advances by distributing the payroll checks significantly in advance of when they were due.

19. The salary advances were unwarranted privileges or exemptions not properly available to similarly situated individuals because the premature payments were special benefits not authorized or approved by the DHA Board.

20. These privileges or exemptions were of substantial value.

21. By, as DHA executive director, accessing the checks, altering their dates and dispersing them ahead of time, Barrasso used her official position to secure these unwarranted privileges or exemptions for herself and her staff.

22. Thus, by authorizing her own and her employees' salary advances without the knowledge or approval of the DHA Board, Barrasso knowingly or with reason to know used her position as DHA executive director to secure unwarranted privileges or exemptions of substantial value that were not properly available to similarly situated individuals in violation of § 23(b)(2).

Sick and Vacation Time

23. As noted above, Barrasso allowed Shorey and five other DHA employees to use sick and vacation time which they had not properly earned or accrued.

24. The sick and vacation time that Barrasso allowed Shorey and the other DHA employees to use were unwarranted privileges or exemptions not properly available to similarly situated individuals because they afforded the DHA employees the special benefit of getting paid for sick or vacation time to which they were not entitled under the DHA policy.

25. In addition, the DHA Board was not aware and had not approved of this use of sick and vacation time.

26. These privileges or exemptions were of substantial value.

27. By, as DHA executive director, allowing her employees to use sick and vacation time to which they were not entitled, Barrasso used her official position to secure these unwarranted privileges or exemptions for Shorey and the other five DHA employees.

28. Thus, by allowing her employees to use sick and vacation time to which they were not entitled under the DHA policy, and without the knowledge or approval of the DHA Board, Barrasso knowingly or with reason to know used her position as DHA executive director to secure for her

subordinates unwarranted privileges or exemptions of substantial value that were not properly available to similarly situated individuals in violation of § 23(b)(2).¹

Resolution

In view of the foregoing violations of G.L. c. 268A by Barrasso, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Barrasso:

- (1) that Barrasso pay to the Commission the sum of \$6, 000 as a civil penalty for repeatedly violating G.L. c. 268A as noted above; and
- (2) that Barrasso waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

STATE ETHICS COMMISSION

DATE: September 27, 2004

¹ The Commission notes that the Office of the State Auditor conducted a thorough audit of the DHA and concluded that during the time relevant, the DHA did not maintain adequate management controls over its payroll expenditures. Among other things, the Auditor recommended that the DHA use payroll software to manage and control the accrued sick and vacation time, and cease its practice of preparing and signing payroll checks in advance.